

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANTHONY BYRD,

Petitioner

v.

JONATHON MINER, WARDEN, ET AL.

Respondents

: CIVIL ACTION NO. 1:CV-01-0956

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(Judge Rambo)

FILED  
HARRISBURG, PA

JUN 06 2001

ORDER

MARY E. D'ANDREA, CLERK  
PER 978 DEPUTY CLERK

Background

On May 29, 2001, the petitioner, an inmate at the Allenwood Federal Prison Camp, filed in this Court a Petition For Writ Of Habeas Corpus for persons in federal Custody pursuant to 28 U.S.C. §2241.<sup>1</sup> The petition presents grounds attacking his conviction and/or the sentence imposed by the United States District Court for District of Delaware.

In accordance with United States v. Miller, 197 F.3d 644 (3d Cir. 1999), the petitioner is advised that (1) he can have the petition ruled on as filed, in which event the threshold issue will be whether relief is available under 28 U.S.C. §2241; (2) have the petition recharacterized as a §2255 motion and transferred to the District Court for the District of Columbia, in which event he may lose his ability to file a second or successive petitions absent certification by the court of appeals, or (3) withdraw his petition

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<sup>1</sup> Along with the petition, Byrd submitted the \$5.00 filing fee for this action.

and file one all-inclusive §2255 motion in the District Court for the District of Delaware within the one-year statutory period provided in 28 U.S.C. §2255.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. Petitioner shall within 45 days of the date of this Order complete and file with the Court the attached Notice of Election.
2. Failure of Petitioner to comply with this Order will result in the Court ruling on the petition as captioned.

Dated: June 4, 2001

  
SYLVIA H. RAMBO  
United States District Judge

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MARY E. D'ANDREA, C  
Per QAS  
DEPUTY CLERK

NOTICE OF ELECTION

You filed an action on May 29, 2001, challenging your sentence imposed by the United States District Court for the District of Delaware. You have labeled your action as one brought under 28 U.S.C. §2241. Please carefully read the following options and make your choice by placing an "X" in the space indicated. After making your choice, return this form to the Clerk of Court, United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, PA, 18501, within forty-five (45) days of the date of this notice. Your options are:

(1) Have your petition ruled upon as filed. In this case have it ruled upon as an action brought under 28 U.S.C. §2241, in which event the threshold issue will be whether relief is available under 28 U.S.C. §2241;

(2) Have your motion recharacterized as a motion brought under 28 U.S.C. §2255 and transferred to the United States District Court for the District of Delaware. However, if you do so, you will lose

your ability to file later or successive petitions under 28 U.S.C. §2255 unless you receive certification from the court of appeals; or,

(3) Withdraw the petition and file one all-inclusive petition under 28 U.S.C. §2255 in the District Court for the District of Delaware within the one-year statutory period provided in 28 U.S.C. §2255. You must refer to 28 U.S.C. §2255 to determine when this one year period begins to run. The reason you may wish to select this option is because you will lose your ability to file later or successive petitions under 28 U.S.C. §2255 unless you receive certification from the court of appeals.

If you do not choose your option by marking the place indicating your choice below, the Court will rule on your petition as filed.

I choose:

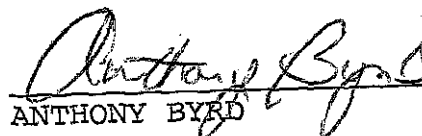
  X  

Option 1. - The Court should rule on my case as filed. I understand that the failure to bring the motion, petition or pleading under 28 U.S.C. §2255 may be a basis for denial or dismissal of the petition.

Option 2. - Recharacterize and treat my case as a proceeding under 28 U.S.C. §2255. I understand that by doing so I will cause this matter to be transferred to the Court in which I was convicted and sentenced and that, as a result, I may lose my ability to file a second or successive §2255 motion absent certification by the court of appeals.

Option 3. - I have not labeled my petition as motion to vacate or set aside my conviction or sentence under 28 U.S.C. §2255. I wish to withdraw my petition which was filed under 28 U.S.C. §2241 so that I may file one, all inclusive motion under 28 U.S.C. §2255 in the Court in which I was convicted and sentenced; that is one that raises all the grounds I have. I realize this all inclusive petition must be filed within the one year period as defined by 28 U.S.C. §2255.

  
ANTHONY BYRD

Date: